IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 25.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.723 of 2006

Ayath ... Petitioner

Vs.

1.The Commissioner of Police,
Greater Chennai,
Chennai-600 008.

2.The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records of the first respondent in Memo No.86/BDFGISV/2006 dated 03.04.2006, set aside the order of detention passed therein and direct the respondents to produce the petitioner before this Court viz., Ayath, S/o Ameer John, confined in Central Prison, Chennai before this Court and set him at liberty.

For Petitioner : Mr.R.Ravichandran
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, by name Ayath, who is detained as a ''Goonda" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 03.04.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, by drawing our attention to the remand order dated 13.03.2006 and reply by the Government in their letter dated 18.08.2006, has contended that the detention order is liable to be interfered with on the ground of non application of mind on the part of the Government in rejecting the representation of the petitioner.

4. In the light of the said contention, we have verified the remand orders dated 13.03.2006. Both the orders are available at pages 131 and 143 of the paper book supplied to the detenu. A reading of the said orders show that when the accused were produced before the IX Metropolitan Magistrate, Saidapet, Chennai, the learned Magistrate has recorded as follows:

> "A1 to A3 produced before me. Accusation explained. A1 to A3 made complaints against police that they were beaten by the police. Remanded till 27.03.2006."

When such is the position, while considering the representation of the detenu dated 28.07.2006, the Government, in their reply dated 18.08.2006, have wrongly stated that "தங்களை நீதிமன்றத்தில் ஆஜர்படுத்தியபோது, காவல் துறையினர் மீது புகார் ஏதும் தெரிவிக்கவில்லை என்றும்...'. As rightly pointed out by the learned counsel for the petitioner, the Government had considered all the documents including remand orders dated 13.03.2006 passed by the IX Metropolitan Magistrate, Saidapet, Chennai, and there is no need to say that there are no complaints by the accused against the police before the Judicial Magistrate. The statement referred to in the reply dated 18.08.2006 of the Government amply shows that they have not verified all the records. In such circumstance, we are of the view that the detention is liable to be interfered with on the ground of non application of mind on the part of the Government in rejecting the representation of the detenu.

5. In addition to this, it is also brought to our notice that the other two co-accused were ordered to be released by the Advisory Board.

6. In these circumstances, we quash the impugned order of detention. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty

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forthwith from the custody unless he is required in some other case or cause.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

raa

To
1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2. The Commissioner of Police, Greater Chennai, Chennai-600 008.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr. R.Ravichandran, Advocate SR NO. 55345

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